IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7655 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE K.M. MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MN VADWALA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7655 of 1995

MR PV HATHI for Petitioner No. 1

MR RM CHAUHAN AGP for Respondents

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 09/08/2002

ORAL JUDGEMENT

Heard the learned advocates.

The petitioner has filed this petition praying

for quashing and setting aside the Order dated 25th March, 1994 passed by the Deputy Secretary, Finance Department [produced at Annexure-G] by which the authority has deducted Rs. 200/= for five years from the pension of the petitioner and also the Order dated 15th July, 1995 passed by the Deputy Secretary, Finance Department in which the Government decided to reject the representation of the petitioner made on 6th June, 1994 and the appeal filed by him. The petitioner has also prayed that the respondents should also repay the amount of pension so far withheld with 15% interest to the petitioner on grant of relief prayed in this behalf.

The facts giving rise to the present writ petition are as under :-

The petitioner was appointed as Sales Tax Officer [] in the respondent no.2-Department. The petitioner, as a Sales Tax Officer, passed an Assessment Order dated 31.12.1977 for the 2031 of one Jayant Extraction company, . It is the case of the petitioner that petitioner followed the same method of assessment as was being followed by the Sales Tax Appellate Authority and approved by the audit in the assessment of the same Jayant Extraction Company for the S.Y 2027.

The assessment order made by the petitioner was taken up in suo-motu revision by the Assistant Commissioner of Sales Tax because of the audit objection based on the judgment rendered in the case of Ashwin Industries and the said order was implemented by recovering the amount of difference from Jayant Extraction Company together with interest and penalty to the tune of roughly Rs. 1,97,000/=. It may be noted that the Sales Tax Tribunal has rendered judgment in the case of one Ashwin Trading Company recognizing a different method of assessment.

On 9th April, 1982, the petitioner was promoted as Sales Tax Officer [Class-I] and posted as Assistant Commissioner of Sales Tax.

The Government issued a chargesheet on 5th December, 1988 alleging that as the Assessment Order dated 31st December, 1977 was not properly made, the Government was likely to lose Rs. 1,97,000/= to which the petitioner replied that he had merely followed the decision of his higher officer while making the assessment.

On 1st February, 1991, the petitioner was allowed

to retire and enquiry initiated in the year 1988 was ordered to continue under BCSR as if he was continued in service after the retirement.

It was alleged against the petitioner that in passing the assessment order for S.Y 2031 i.e., year 1977 in the case of Jayant Extraction Industries, the defective assessment order was made and thus the petitioner has committed serious misconduct under Rule 3 of the Gujarat Civil Services [Discipline & Appeal] Rules, 1971. It was further alleged that the petitioner followed a wrong method, however, he ought to have followed the method given in the judgment rendered by the Bombay High Court in the case of Bearer Industries as well as the judgment rendered by the Sales Tax Tribunal in the matter of Vallabh Glass Works dated 19th August, 1977. Only two documents were annexed to the said chargesheet i.e., [1] the assessment order and; [2] the order of review dated 26th April, 1979.

It was the case of the petitioner that he had followed the method of assessment as was being followed by the Sales Tax Appellate Authority, which was subsequently approved by the Audit Department of the Sales Tax in the assessment of the said M/s. Jayant Extraction Company for the S.Y 2027 and that his assessment order was taken up in suo-motu revision by the Assistant Commissioner of Sales Tax and the full amount of difference together with interest and penalty was recovered from Jayant Extraction Company in 1979 and that no chargesheet could have been given after 11 years and after he was promoted in April, 1984 as Assistant Commissioner of Sales Tax.

As stated above, the petitioner was allowed to retired in the year 1991. However, the enquiry was ordered to be continued as if he was in service and on conclusion of departmental proceedings, the commissioner for departmental inquiry came to the conclusion that the action of the petitioner was not proper and that the petitioner ought to have taken more care. The Commissioner for departmental inquiry, however, did not come to a positive finding as to whether the case of Berar Industries, decided by the Bombay High Court, was applicable to the facts, and also, avoided to refer to the date on which the judgment of the Sales Tax Tribunal in the case of Vallabh Glass Works was made known to the Sales Tax Officer generally and it was now admitted position that the gist of the said order came to be published by the Department for Information of Sales Tax Officers for the first time only in February, 1978 i.e,

after the order of assessment was made by the petitioner herein. It was further submitted by the petitioner that the competent authority without considering the number of issues raised by the petitioner in his representation dated 16th June, 1992 where he had relied upon the two judgments of the Madras High Court and Andhra Pradesh High Court, on the relevant aspect as to whether a person exercising judicial or quasi judicial power can be subjected to disciplinary proceedings for passing wrong orders without any motivation. It was submitted that, in fact, the said order of the Commissioner of Department Inquiry is a non-speaking order, and therefore, the same is liable to be quashed and set-aside in this behalf.

The learned advocate for the petitioner has relied upon the judgment of the Apex Court in the case of P.C Joshi v. State of U.P & Ors., reported in 2001 SCC (L&S) 984. In paragraph 7, the Hon'ble Supreme Court has held as under :-

".7 In the present case, though elaborate enquiry has been conducted by the enquiry officer, there is hardly any material worth the name fothcoming except to scrutinize each one of the orders made by the appellant on the judicial side to arrive at a different conclusion. That there was possibility on a given set of facts to arrive at a different conclusion is no ground to indict a judicial officer for taking one view and that too for alleged misconduct for that reason alone. The enquiry officer has not found any other material, which would reflect on his reputation or integrity or good faith or devotion to duty or that he has been actuated by any corrupt motive. At best, he may say that the view taken by the appellant is not proper or correct and not attribute any motive to him which is for extraneous consideration that he had acted in that manner. If in every case where an order of a subordinate court is found to be faulty a disciplinary action were to be initiated, the confidence of the subordinate judiciary will be shaken and the officers will be in constant fear of writing a judgment so as not to face a disciplinary enquiry and thus judicial officers cannot act independently or fearlessly. Indeed the words of caution are given in K.K Dhawan's case and A.N Saxena case that merely because the order is wrong or the action taken could have been different does not warrant initiation of

disciplinary proceedings against the judicial officer. In spite of such caution, it is unfortunate that the High Court has chosen to initiate disciplinary proceedings against the appellant in this case.

In paragraph no. 12, the Hon'ble Apex Court has held that :-

"12. We, therefore, have no hesitation to allow this appeal, set-aside the order made by the High Court and thereby allow the writ petition filed by the appellant, directing his immediate reinstatement in service with continuity of service and all consequential benefits such as payment of arrears of salary and other benefits. No costs."

On the other hand, learned AGP Mr. Chauhan appearing for the respondent-State has tried to support the order made by the Government.

I have also considered the inquiry report of the Commissioner of Enquiry against the petitioner dated 11th February, 1992 and also the show cause notice issued by the Finance Department dated 21st May, 1992 issued to the petitioner calling upon him to explain on the enquiry report. I have also considered the explanation submitted by the petitioner to the Government dated 16th June, 1992, and the order of penalty dated 25th March, 1994 reducing pension of Rs. 200/= p.m. for a period of five years, which order came to be passed two years after the date of report of enquiry officer and two years and two months after the explanation submitted by the petitioner during which time the gratuity of the petitioner remained withheld and for that Special Civil Application No. 8264 of 1993 came to be filed by the petitioner in this behalf before this Court.

I have also considered the facts and circumstances of the case and also considered the judgments of the Hon'ble Supreme Court. It is nodoubt true that the petitioner had passed the Assessment Order but he has acted bona fide and he has passed the order based upon earlier appellate orders of the Department. It is nodoubt true that the order passed by the petitioner was contrary to the Tribunal's order but the petitioner came to know about the same only in February, 1978, by which time, he has already passed the assessment order in question. In view of the same, the order passed by the petitioner is a bona fide order. In my view,

therefore, a quasi-judicial officer who follows earlier order has acted bona fide and it cannot be termed as a misconduct in his behalf. At best, it is a case of bona fide and erroneous exercise of judicial powers and that matter cannot be treated as misconduct at all. Further, there is no allegation against the petitioner about his reputation, integrity, good faith or devotion to duty or any corrupt motive on his part. It is also not the case of the Department that there was already an order of the Tribunal which was existing and the petitioner has not followed the same. If that be so, the petitioner might have committed error in this behalf. But, that is not the case of the Department here. The enquiry officer has not found any other material which would reflect on his reputation or integrity or good faith or devotion to duty or that he had been actuated by any corrupt motive. At best, the Enquiry Officer might say that the view taken by the petitioner was not proper or correct.

In view of the above, this petition is allowed. The orders at Annexures "G" & "H" are hereby quashed and set-aside. I direct the respondents to immediately repay the amount of pension withheld with 10% interest to the petitioner. Rule is made absolute with no order as to costs.

[K.M Mehta, J.]

Prakash*